

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

MARKET DOMINANT PRODUCT PRICES  
INBOUND MARKET DOMINANT PRIME TRACKED SERVICE  
AGREEMENT (MC2017-71)  
NEGOTIATED SERVICE AGREEMENT

Docket No.  
R2017-3

**NOTICE OF UNITED STATES POSTAL SERVICE OF FILING REVISED VERSION  
OF INBOUND MARKET DOMINANT PRIME TRACKED SERVICE AGREEMENT**  
(November 15, 2017)

In Order No. 3755, the Postal Regulatory Commission (Commission) added Inbound Market Dominant PRIME Tracked Service Agreement to the market dominant product list.<sup>1</sup> The United States Postal Service (Postal Service) hereby gives notice of filing, pursuant to 39 U.S.C. § 407(d)(2), a revised version of the PRIME Tracked Service Agreement. A redacted copy of the revised version of the PRIME Tracked Service Agreement is included as Attachment 1 to this filing, and the Postal Service has filed an unredacted version of the agreement under seal with the Commission.

The differences between the text of the attached revised PRIME Tracked Service Agreement and the text of the version of the PRIME Tracked Service Agreement included as Attachment 2 to the Postal Service's initial request and notice in this docket<sup>2</sup> include the following:

- Article 2, sixth paragraph has been revised;
- Article 8, first paragraph has been revised;

<sup>1</sup> PRC Order No. 3755, Order Adding Inbound PRIME Tracked Service Agreement to Market Dominant Product List, Docket Nos. MC2017-71 and R2017-3, January 17, 2017, at 10.

<sup>2</sup> Request of United States Postal Service to Add Inbound Market Dominant PRIME Tracked Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, Docket Nos. MC2017-71 and R2017-3, December 23, 2016, Attachment 2.

- Annex 2, a second paragraph has been added in the “2 – Barcode and messaging” section; and
- Annex 6, the List of Parties has been updated.

The changes to Article 2 concern the applicability of the PRIME Tracked Agreement to outbound cross-border mail items sent by a Sending Party. The revisions to Article 8 and Annex 2 set forth terms for a Sending Party that is a signatory to both the PRIME Exprès Service Agreement and the PRIME Tracked Agreement. The Postal Service previously informed the Commission of the parties listed in Annex 6 in the Postal Service’s filing of October 20, 2017, in this docket.<sup>3</sup> The Postal Service considers that the differences listed above between the revised version of the PRIME Tracked Service Agreement included as Attachment 1 to this notice that is scheduled to go into effect on January 1, 2018, and the agreement that was included in the Postal Service’s initial request and notice in this docket, as updated by a recently filed list of parties, do not affect rates, fees, and mail classifications.

The organizational unit responsible for administration of PRIME agreements has informed the Postal Service that because the differences listed above include revisions to the text of the PRIME Tracked Agreement, PRIME members are asked to re-sign the agreement. As a result, the Postal Service intends to re-sign the agreement shortly and to subsequently file a notice with the Commission that the Postal Service and at least one other foreign postal operator have executed the revised version of the PRIME Tracked Agreement.

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<sup>3</sup> See Notice of United States Postal Service Providing Updates concerning Parties to Inbound Market Dominant Exprès Service Agreement 1, Inbound Market Dominant Registered Service Agreement 1, Inbound Market Dominant PRIME Tracked Service Agreement 1, Docket Nos. R2011-6, R2016-6, and R2017-3, October 20, 2017.

The Postal Service incorporates by reference the application for non-public treatment that was filed in conjunction with the Postal Service's December 23, 2016 request and notice in this docket.<sup>4</sup> The application protects from disclosure the information that has been redacted from the redacted version of the agreement that the Postal Service is filing publicly today with this notice.

Respectfully submitted,

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November 15, 2017

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<sup>4</sup> Request of United States Postal Service to Add Inbound Market Dominant PRIME Tracked Service Agreement to the Market Dominant Product List, Notice of Type 2 Rate Adjustment, and Application for Non-Public Treatment, Docket Nos. MC2017-71 and R2017-3, December 23, 2016, Attachment 4.

## **PRIME Tracked Service Agreement**

made and entered into this 01/02/2017 by and  
between the parties listed in Annex 6  
(collectively the "Parties")

Witnessed:

WHEREAS the Parties are UPU-designated postal operators engaged, inter alia, in the cross-border transportation and delivery of mail, and

WHEREAS each of the Parties performs the Exprès items service pursuant to Article 15 of the UPU Convention, and

WHEREAS the Parties wish to develop this Exprès items service into a priority product with reliable track & trace features and a common logo, and

WHEREAS the Parties wish to remunerate each other for the timely return of scans with an enhanced payment that will be due in addition to the basic payment they have agreed per each item, and

WHEREAS the Parties each wish to maintain their freedom to determine pricing and conditions in respect of their customers.

Now, therefore, the Parties hereby agree as follows:

### **Article 1: Definitions**

All terms beginning with a capital letter in this Agreement (including the Annexes) are defined either in Annex 1 to this Agreement or in the body of this Agreement and referred to in Annex 1.

### **Article 2: Delivery of Tracked Items**

This Agreement covers the delivery of cross-border LC/AO items weighing up to 2 kg, or up to 5 kg if bilaterally or multilaterally agreed by the parties, tendered as PRIME Tracked Items and branded with the Common Logo. Such items are referred to in this Agreement as "PRIME Tracked Items".

A Party that receives PRIME Tracked Items (the "Receiving Party") from another Party (the "Sending Party") for delivery in its country shall deliver such mail in accordance with the terms of this Agreement.

PRIME Tracked Items shall be delivered in the priority stream network as foreseen in Annex 2.

Delivery information shall be available as described in Annex 2.

Parties shall comply with the response times, labelling, scanning and other service and product features as set out in Annex 2.

No Party is obliged to tender any of its outgoing cross-border mail as PRIME Tracked Items. However, a Sending Party who chooses to send an outgoing cross-border mail item as a Tracked Item to a Receiving Party must do so under the terms of this Agreement

Any Party's right to avail itself of Article 15 of the UPU Convention remains unaffected.

### **Article 3: Remuneration for the Delivery of PRIME Tracked Items**

A Receiving Party that receives PRIME Tracked Items from a Sending Party for delivery in its country shall receive from that Sending Party [REDACTED]

[REDACTED]

[REDACTED]

### **Article 4: Steering Committee**

The Parties shall meet when there are important topics to be discussed in the Tracked Agreement Steering Committee. [REDACTED]

[REDACTED]

[REDACTED] Tracked Agreement Steering Committee is [REDACTED]

### **Article 5: Common Logo**

The PRIME Tracked Items service shall be marketed under the Common Logo defined in Annex 2.

### **Article 6: Liability**

Liability of the Parties shall be ruled by Article 23 of the UPU Convention.

### **Article 7: Undeliverable Items**

Undeliverable PRIME Tracked Items shall be returned in accordance with the UPU Letter-Post Regulations applicable to priority mail items.

## **Article 8: Bilateral and Multilateral Agreements**

This Tracked Agreement does not prevent a Sending Party that is also a signatory to the PRIME Exprès agreement from dispatching to a Receiving Party that is also a signatory to the PRIME Exprès agreement (a) PRIME Tracked Items, and (b) PRIME Exprès Items in accordance with the terms of the PRIME Exprès agreement, pursuant to the second section of Annex 2 of this Agreement.

This Tracked Agreement supersedes the UPU Supplementary Remuneration Program.

Parties may agree to deviate from, and/or to supplement, the provisions of this Agreement by entering into bilateral and/or multilateral agreements that involve fewer than all of the Parties, provided that such agreements bind only the Parties that enter into them. In particular, such bilateral and/or multilateral agreements may provide for different remuneration and service features applicable between or among the Parties involved.

## **Article 9: Contracts with Customers**

This Agreement does not establish the prices that any Party charges to, and the contractual terms governing its relationship with, its customers.

## **Article 10: Settlement of Accounts**

The Parties' claims for remuneration will be settled quarterly on a bilateral basis or at any other interval agreed by the Parties concerned.

## **Article 11: Term and Termination**

This Agreement shall enter into force on 1 February 2017 between those Parties that have executed it by that date irrespective of how many Parties have executed it.

This Agreement is entered into for an indefinite period of time. Any Party may withdraw from this Agreement at any time after that Party's execution by [REDACTED]

[REDACTED] Such withdrawal shall take effect only at the end of the third full calendar month following receipt of the notice of withdrawal [REDACTED]

## **Article 12: Accessions**

Without the necessity of a written instrument duly executed on behalf of all of the Parties, any other UPU designated postal operator can accede to this Agreement by executing a Deed of Accession in the form of Annex 4 and delivering it to the Head of PRIME, who will inform the Parties. The accession is subject to approval by the Tracked Agreement Steering Committee. The accession will become effective on the first day of the second calendar month following the approval of the accession by the Tracked Agreement Steering Committee. The list of Parties is referred to in Annex 6 and it is updated by the Head of PRIME each time a new Party is approved.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Article 13: Severability**

If any of the provisions of this Agreement (including its Annexes) for any reason whatsoever is or becomes invalid, unenforceable, or unperformable, the legal validity of the remaining provisions of the Agreement (including its Annexes) shall in no way be affected. In that event, the Parties shall attempt in good faith to reach agreement to replace the invalid, unenforceable, or unperformable provision with a new provision that comes as close as possible to achieving the original intent of the invalid, unenforceable, or unperformable provision.

**Article 14: Annexes - Entire Agreement**

The Annexes referred to in this Agreement are an integral part of this Agreement. This Agreement, together with the Annexes hereto, constitutes the entire agreement and understanding between the Parties.

**Article 15: Headings**

Headings in this Agreement are inserted for convenience only and are not to be considered part of this Agreement.

**Article 16: Assignment - Successors**

This Agreement may not be assigned by any Party without the prior written consent of the simple majority of all other then-current Parties. All the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors.

**Article 17: Arbitration**

Any disputes arising out of or in connection with this Agreement shall be finally and bindingly resolved by an arbitration committee (the "Arbitration Committee"). The laws of The Netherlands shall apply. The members of the Arbitration Committee shall be independent of Parties to the dispute. Each Party or group of Parties involved in the dispute shall appoint an arbitrator within one month of notifying the Head of PRIME of the dispute or of being informed of such a notification by the Head of PRIME. If any of the Parties to the arbitration fails to do so, the Tracked Agreement Steering Committee shall appoint an arbitrator within a further month.

The arbitrators thus appointed shall have one month from the day on which the last of them was appointed to appoint another arbitrator to chair the Arbitration Committee. If they fail to do so, the Tracked Agreement Steering Committee shall appoint this arbitrator within a further month.

The Arbitration Committee shall render its decision within two months of its constitution. Its decision will be binding on the Parties involved in the dispute. The arbitration proceedings shall be conducted in the English language.

The Arbitration Committee shall decide which Party or Parties shall bear its costs.

#### **Article 18: Amendment**

This Agreement may be amended by the Parties at any time, but only by a written instrument, duly executed on behalf of all of the then-current Parties. Notice of the executed amendment shall be sent to the Head of PRIME, who will inform the Parties.

In addition, the Tracked Agreement Steering Committee is empowered to amend the Annexes to this Agreement. Amended Annexes shall be distributed promptly to all Parties of the Agreement.

#### **Article 19: Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of The Netherlands.

#### **Article 20: Notices**

All notices, requests, and other communications permitted or required to be given under this Agreement shall be in writing in the English language and shall be signed by a person duly authorized to provide such notice.

Notices shall be given by (a) registered or certified mail, with Advice of Receipt requested, (b) private courier service, or (c) email with read confirmation addressed to the address of the Head of PRIME or at such other addresses as the Head of PRIME may designate by like notice from time to time.

Such notices shall be deemed to have been given upon receipt.

#### **Article 21: Confidentiality**

The Parties to this Agreement acknowledge that any information included in this Agreement, including rate information and information concerning the quality of service performance under this Agreement, constitute commercially sensitive information and should not be disclosed to third parties except as required by law.

#### **Article 22: Transfer of Personal Data between the Parties**

For the purpose of this Agreement, the transfer of Personal Data shall be subject to the prior signature of a bilateral or of a multilateral agreement between the Parties concerning the transfer of Personal Data, such as an agreement for the electronic exchange of customs data

In witness whereof, the Parties have caused this Agreement to be duly executed and delivered as of the date first above written.



## **List of Annexes**

Annex 1:	Definitions
Annex 2:	Technical Specifications
Annex 3:	Remuneration
Annex 4:	Deed of Accession
Annex 5:	Trademark Agreement
Annex 6:	List of Parties
Annex 7:	USPS Participation

## **Annex 1: Definitions**

### **Agreement**

PRIME Tracked Service Agreement dated 1 February 2017.

### **Arbitration Committee**

Has the meaning attributed to it in Article 17.

### **Common Logo**

Has the meaning attributed to it in Article 5 and Annex 2.

### **Deed of Accession**

Deed to be executed by a UPU-designated postal operator wishing to accede to the Agreement.

### **Enhanced Payment**

Has the meaning attributed to it in Article 3 and Annex 3.

### **Head of PRIME**

The person who is responsible for managing the PRIME activities and the PRIME Management Team.

### **LC/AO**

LC: In the classification system based on contents, abbreviation used to refer to letters and postcards. As regards conveyance, includes aerogrammes and money orders, COD money orders and advices of receipt/of delivery/of payment and of entry.

AO: In the classification system based on contents, abbreviation used to refer to other items (printed matter, literature for the blind, small packets), as opposed to LC.

### **Parties**

The parties having entered into the Agreement.

### **Personal Data**

Personal Data shall be as defined in the applicable bilateral or multilateral agreement between the Parties concerning the transfer of personal data, such as an agreement for the electronic exchange of customs data.

### **PREDES**

Pre-Advice of Dispatch

### **PRIME**

About 141 Designated Postal Operators working together in the tracked packet area.

### **PRIME Tracked Items**

Has the meaning attributed to it in Article 2.

### **Ready Reckoner**

Official document to assist the settlement of accounting among PRIME members.

**Receiving Party**

Has the meaning attributed to it in Article 2.

**RESDES**

Response from the destination operator to a PREDES message.

**Sending Party**

Has the meaning attributed to it in Article 2.

**Steering Committee**

Has the meaning attributed to it in Article 4.

**Trademark Agreement**

Has the meaning attributed to it in Article 5 and Annex 5.

**UPU**

Universal Postal Union.

**UPU Convention**

The Universal Postal Convention. References in the Agreement are to the Articles of the UPU Convention currently in force, as revised by the 2012 Doha Congress. As later Universal Postal Conventions enter into force, these references are to be read as to the corresponding portions of the language Articles in those conventions even though the numbering of such portions within the Convention have been subsequently recast or otherwise changed by the UPU.

**UPU Letter-Post Regulation**

The Universal Postal Union Regulations then in force, for the exchange of cross-border mail. References in the Agreement are to the Regulations as revised following the 2012 Doha Congress. As later revisions enter into force, these references are to be read as to the corresponding Articles in the most recent version even though the numbering may be different.

## Annex 2: Technical Specifications

### 1 – Processing of PRIME Tracked Items

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 2 – Barcode and messaging

The barcode and messaging must conform to UPU standards, as contained in the UPU's S10 manual and amended from time to time. All messages should be sent in EDI format defined by the UPU.

A Sending Party that is also a signatory to the PRIME Exprès agreement that dispatches, pursuant to Article 8 of this Agreement, to a Receiving Party that is also a signatory to the PRIME Exprès agreement (a) PRIME Tracked Items, and (b) PRIME Exprès Items in accordance with the terms of the PRIME Exprès agreement, shall [REDACTED]

[REDACTED]

### 3 – Common Logo

The PRIME Tracked Items shall be marketed under the following common logo (the "Common Logo"), in accordance to Article 5 of the Agreement:



All Parties, except those who choose not to use the PRIME Tracked Items service for outgoing cross-border mail, shall execute the Trademark Co-operation Agreement made and entered into on December 23, 1999.



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Annex\_4b\_Trademar

### Annex 3: Remuneration

This annex establishes the Enhanced Payment remuneration applicable to the PRIME Tracked product. This Annex is applicable as of 1 February 2017, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Annex 4: Deed of Accession

### ***THE UNDERSIGNED "ACCEDING PARTY"***

[name of the postal operator],

Requests admission to the PRIME Tracked Service Agreement.

The accession is effective and binding upon the undersigned Acceding Party from the first day of the second calendar month following the approval of the accession by the Tracked Agreement Steering Committee according to Article 12.

If so approved, the Acceding Party agrees to be bound by all of the provisions of such PRIME Tracked Service Agreement.

Signed at ..... on .....

UPU Designated Postal Operator (DPO) - Name
.....
DPO's Authorized Representative
Name .....
Signature .....

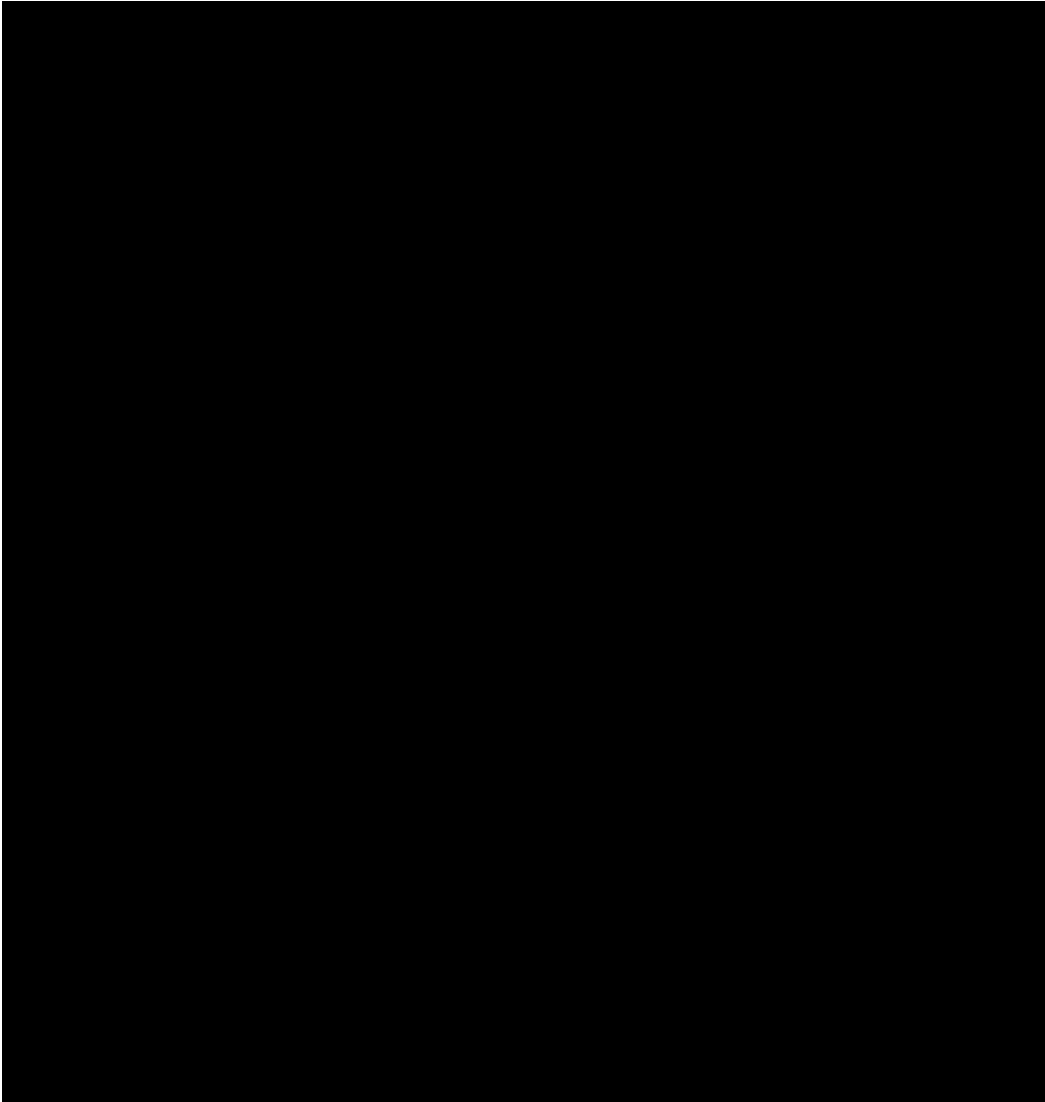


## Annex 5 Trademark Agreement



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**Annex 6: List of Parties**



**United States Postal Service**

**United States of America**

## **Annex 7: The United States Postal Service's Participation in the PRIME Tracked Service Agreement**

1. If the Conditions Precedent described in Paragraph 2b of this Annex are not fulfilled, [REDACTED]

[REDACTED] If the USPS becomes a party to this Agreement, and the USPS deposits a notice of withdrawal with Head of PRIME in accordance with Article 11 of the Agreement, [REDACTED]

[REDACTED]

[REDACTED]

2. USPS, IPC, and the parties to this Agreement acknowledge that USPS's participation in this Agreement is subject to the following conditions, as well as any additional conditions that the USPS may propose upon further review of this Agreement:

a. All taxes and duties are the sole responsibility of the PRIME party to whom they are duly assessed and shall not be charged to the USPS in any form unless the USPS otherwise provides in a written agreement with the respective PRIME party.

b. USPS's acceding to this Agreement and all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by (hereinafter "Conditions Precedent") one or more internal and external bodies that have oversight responsibilities over the USPS. Conditions Precedent may include but are not limited to: approvals or, if applicable, non-objection, from the USPS's management, the Governors of the USPS, the Board of Governors of the USPS, and the U.S. Postal Regulatory Commission. The USPS, IPC, and the parties to this Agreement acknowledge that this Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under this Agreement, no obligation in relation to the USPS shall exist for the USPS, IPC, and the parties to this Agreement, and no benefit or rights granted shall inure to the USPS, IPC, and the parties to this Agreement in relation to the USPS until such time as the Conditions Precedent shall have been fulfilled.

c. In the event that the Conditions Precedent are not fulfilled, the USPS, IPC, and the parties to the Agreement shall have no liability, which shall include no obligation to pay fees or costs associated with any action taken by the USPS, IPC, and the parties to this Agreement. Further, in the event of termination of this Agreement or the failure of any Condition Precedent, the USPS, IPC, and the parties to this Agreement shall not be held liable for any damages or costs of any nature whatsoever.

d. The USPS, IPC, and the parties to this Agreement acknowledge that any rate information included in this Agreement and information concerning the quality of service performance under this Agreement constitute commercially sensitive information and should not be disclosed to third parties except as required by law. USPS, IPC and the other parties to this Agreement will treat as confidential and not

disclose to third parties, absent express written consent of the other parties, any such information related to this Agreement as long as it is treated as non-public by the U.S. Postal Regulatory Commission. USPS, IPC and the other parties to this Agreement acknowledge that United States law may require that this Agreement be filed with the U.S. Postal Regulatory Commission and the U.S. Department of State. In addition, the USPS may be required to file information in connection with this Agreement in Commission dockets, including the U.S. Postal Regulatory Commission docket number for the Annual Compliance Report (ACR) for the USPS fiscal year(s) in which this Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR201#, in which "201#" signifies the USPS fiscal year to which the ACR pertains. USPS, IPC and the other parties to this Agreement authorize the USPS to determine the scope of information that must be made publicly available under the U.S. Postal Regulatory Commission's rules. USPS, IPC and the other parties to this Agreement further understand that any unredacted portion of this document or the text of this Agreement may be posted on the Commission's public website, [www.prc.gov](http://www.prc.gov). IPC and the other parties to this Agreement have the right, in accordance with the U.S. Postal Regulatory Commission's rules, to address confidentiality concerns directly with the U.S. Postal Regulatory Commission. The procedure for making an application to the U.S. Postal Regulatory Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Postal Regulatory Commission's website: [www.prc.gov/Docs/63/63467/Order225.pdf](http://www.prc.gov/Docs/63/63467/Order225.pdf). At the request of IPC or the parties to this Agreement, the USPS will furnish notice of the docket number of the U.S. Postal Regulatory Commission proceeding, if any, used in connection with this Agreement(s). The USPS, IPC and the parties to this Agreement shall each provide the same care to avoid disclosure or unauthorized use of the confidential information as each would provide to maintain the confidentiality of its own information

e. The USPS, IPC, and the parties to this Agreement acknowledge that all rights, title, and interest to the trademark and logo(s) for POST EXPRES within the United States of America, including U.S. Trademark Registration Nos. 3,072,352 and 4,288,143, together with any goodwill symbolized by the trademark and logo(s), belong to the USPS. The USPS, IPC, and the parties to this Agreement further agree to assign and cooperate in assigning to the USPS, after the USPS has become a party to this Agreement and at the expense of the USPS, the entire rights, title, and interest within the United States of America to any trademark(s) and logo(s) included in this Agreement, together with any goodwill symbolized by the trademark(s) and logo(s). IPC agrees to execute all documents necessary to effectuate such assignment upon the USPS's execution of applicable agreements.

3. If and when the USPS becomes a party to any of this Agreement, IPC and the parties to this Agreement shall be deemed to have acknowledged the contents of this document.